

**ARKANSAS COURT OF APPEALS**DIVISION I  
No. CR-15-529

CASEY D. KENNEDY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered January 13, 2016

APPEAL FROM THE BOONE  
COUNTY CIRCUIT COURT  
[NO. 05CR-2014-198]HONORABLE GORDON WEBB,  
JUDGEREBRIEFING ORDERED;  
MOTION TO WITHDRAW DENIED**LARRY D. VAUGHT, Judge**

On October 1, 2014, appellant Casey Kennedy was convicted in the Boone County District Court of the misdemeanor offense of obstruction of government operations in violation of Arkansas Code Annotated section 5-54-102. He received a thirty-day suspended sentence and was fined \$265. On November 2, 2014, he appealed the conviction to the circuit court. The State moved to dismiss the appeal as untimely. The circuit court found that the appeal was untimely filed and dismissed the case, finding that it lacked jurisdiction. Kennedy appealed.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k) of the Rules of the Arkansas Supreme Court, Kennedy's counsel has filed a motion to withdraw, alleging that this appeal is wholly without merit, and a brief in which he contends that all adverse rulings are abstracted and discussed. Via certified mail, Kennedy was sent a copy of the appellant's brief, his attorney's motion to withdraw, and a letter informing him of his right to

file pro se points for reversal. The mail package was returned, marked “Moved, Left No Address, and Unable to Forward.” We deny counsel’s motion to withdraw and order rebriefing.

Stating that there would be no merit to an appeal, Kennedy’s counsel has filed a motion to withdraw and a no-merit brief with this court, in which he alleges that all adverse rulings have been abstracted and discussed in accordance with Arkansas Supreme Court Rule 4-3(k) (2014). However, we must deny counsel’s motion to withdraw and order rebriefing, as he has failed to abstract relevant testimony and include all adverse rulings in his abstract and addendum. The abstract must contain “material parts” of the transcripts, including information “essential for the appellate court to . . . decide the issues on appeal.” Ark. Sup. Ct. R. 4-2(a)(5) (2015). Here, it is unclear from counsel’s brief whether the State filed a written motion to dismiss or simply made an oral motion at the hearing, as neither motion is contained in the abstract and addendum. Counsel’s brief states that “[t]he State moved to dismiss the appeal of the conviction to circuit court as untimely filed and a hearing was held,” indicating that a prehearing motion was filed. However, the addendum contains no such motion. Additionally, counsel failed to abstract any oral motion to dismiss presented at the hearing. Therefore, counsel’s abstract and addendum fail to include the very motion upon which this case was decided.

In a criminal no-merit appeal, in order to comply with Arkansas Supreme Court Rule 4-3(k)(1) and *Anders, supra*, counsel is required to abstract and discuss every adverse ruling, and we must order rebriefing if counsel fails to do so. *Sartin v. State*, 2010 Ark. 16, 362 S.W.3d 877. Because the no-merit brief in this case is deficient, we order counsel to file a

substituted abstract, brief, and addendum within fifteen days from the date of this opinion. Ark. Sup. Ct. R. 4-2(b)(3) (2015). The deficiencies noted above should not be taken as an exhaustive list, and we encourage counsel to review the requirements contained in Rule 4-3(k)(1) prior to filing a substituted brief. We express no opinion as to whether the new appeal should address the merits or should be made pursuant to Rule 4-3(k)(1). If a no-merit brief is filed, the clerk will again attempt to forward counsel's motion and brief to Kennedy so that, within thirty days, he will again have the opportunity to raise any points he chooses in accordance with Arkansas Supreme Court Rule 4-3(k)(2). In either instance, the State shall be afforded the opportunity to file a brief in response.

Rebriefing ordered; motion to withdraw denied.

GLADWIN, C.J., and GLOVER, J., agree.

*Potts Law Office*, by: *Gary W. Potts*, for appellant.

No response.